



February 8, 1999

Ms. Joni M. Vollman
Assistant General Counsel
Harris County District Attorney
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR99-0366

Dear Ms. Vollman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122047.

The Harris County District Attorney received a request for all materials pertaining to the arrest, investigation, and trial of Ms. Tanya Cryar in cause numbers 94-29416 and 94-29417. You argue that three categories of information, submitted as Exhibits A, B, and C, are excepted from disclosure by sections 552.101, 552.108, and 552.117 of the Government Code.

You first argue that the information in Exhibit A is excepted from disclosure by section 552.108. Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

* * *

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

* * *

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. *See* Gov't Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain the documents in Exhibit A constitute the prosecutor's work product. You state that the information you seek to withhold in Exhibit A consists of the "handwritten notes of prosecutors, the cover folder of the prosecutors' file, which contain handwritten notes of prosecutors, and copies of the D.I.M.S. sheet." After examining Exhibit A, it appears that the information you seek to withhold was prepared by an attorney representing the state in criminal litigation. The information you seek to withhold in Exhibit A is protected from disclosure under section 552.108(a)(3)(A).

You assert that the material in Exhibit B must be withheld under section 552.101. Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the release of Criminal History Record Information (CHRI) maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, any CHRI in your possession that falls within the ambit of these state and federal regulations must be withheld.

You next claim that Exhibit C, a phone message, which reflects a police officer's home phone number is excepted from disclosure under section 552.117 of the Government Code. Section 552.117 of the Government Code provides that information may be withheld if it is:

information that relates to the home address, home telephone number, social security number, or that reveals whether the following person has family members:

* * *

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

You must, therefore, withhold the peace officer's home telephone number. Open Records Decision Nos. 532 (1989), 530 (1989).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB\nc

Ref: ID# 122047

Enclosures: Submitted documents

cc: Mr. Michael Charlton
3200 Southwest Freeway, Suite 11207
Houston, Texas 77027
(w/o enclosures)